

Hyg 9/14/05

SM 602-05	Konecny, Karel
VAR	04-0878

MSA-S-1829-5232

12/1/10
File originally
cleaned. 350

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

September 14, 2005

Ms. Yvonne Chaillet
St. Mary's County
Department of Land Use and Growth Management
23150 Leonard Hall Drive
PO Box 653
Leonardtown, MD 20650-0653

RE: Local Case No. 04-0878 Karel Konecny Lot 33

Dear Ms. Yvonne:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling, attached garage, driveway, porch/sidewalk, septic system, drainage and stormwater management systems within steep slopes and expanded Buffer. The 1.94 acre property is currently undeveloped, fully forested with steep slopes, tidal wetlands, and expanded Buffer, and is designated as Limited Development Area (LDA).

Providing that this lot is properly grandfathered, we do not oppose a variance to develop the parcel; however, impacts must be minimized and the variance the minimum necessary. Based on the information provided, we have the following comments regarding the development proposal and variance request.

As shown on the site plan, steep slopes and highly erodible soils encompass the entire lot, and therefore we recognize that a variance is necessary to permit development of the lot. 10.9% of the forest will be removed; the amount of impervious surface coverage proposed is 3,630 square feet (or 4.3%).

- 1) The proposal shows limits of disturbance (LOD) into the 25-foot slope setback. In addition, the proposed well is situated directly on the 25-foot slope setback. There appears to be some room to move the proposed dwelling closer to Cat Creek Road by moving the dwelling to the southwest and reducing the parking area which would reduce impacts to the expanded Buffer.

Yvonne Chaillet

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- 2) The Commission recommends that mitigation be provided in accordance with Section 24.4.2.b of the County's comprehensive zoning ordinance. Any areas that might be used for temporary staging and stockpile should be restored to the previous condition.
- 3) The applicant is proposing to direct stormwater runoff from the dwelling to two drywells, one located on the east side of the dwelling and the other on the west side of the dwelling. The Commission supports the use of the drywells to treat and control stormwater runoff on this site to protect erodible soils.
- 4) The applicant has listed the parcel as being 1.94 acres. According to the Maryland Department of Assessments and Taxation the parcel is described as being 2.16 acres (Account Identifier: District 06 Account Number 043712). The lot should be reviewed to determine the correct acreage.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

Gary Green

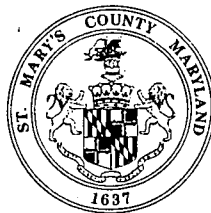
Environmental Analyst

cc: SM602-05

**ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT**

Denis D. Canavan, Director

Phillip J. Shire, Deputy Director



602-05

Francis Jack Russell, President
Kenneth R. Dement, Commissioner
Lawrence D. Jarboe, Commissioner
Thomas A. Mattingly, Sr., Commissioner
Daniel H. Raley, Commissioner

MEMORANDUM

DATE: July 6, 2007
TO: Denis Canavan, Director
FROM: Yvonne Chaillét, Zoning Administrator
SUBJECT: AD VAAP #04-0878, Konecny
Administrative Hearing of June 28, 2007
Supplemental Report

I. DEVELOPMENT DATA

REQUEST: Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer, expanded for steep slopes, to construct a single-family dwelling and appurtenances

OWNER: Golden West Way Construction

LOCATION: Lot 33 of the Riverwood Farms Subdivision, located on Cat Creek Road in Mechanicsville, MD

TAX MAP: 15 ELECTION DISTRICT: 6th

BLOCK: 03 ACREAGE: 1.94 acres

LOT: 33 USE: 11, Detached Dwelling Unit

ZONING: Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay

II. NOTIFICATION: The property was advertised in *The Enterprise* on June 13, 2007 and June 20, 2007.

III. APPLICABLE REGULATIONS:

St. Mary's County Comprehensive Zoning Ordinance (Ordinance)

1. Section 20.4 Director of Planning and Zoning. Powers and Duties
2. Section 24.4 Specific Standards for Granting Variances in the Critical Area
3. Section 71.8.3 The 100-Foot Critical Area Buffer

IV. STAFF COMMENTS:

1. The Planning Director granted variance approval on November 18, 2005 to add new impervious surface in the expanded Critical Area Buffer to construct a single-family dwelling and appurtenances. The variance lapsed after one year because the Applicant failed to obtain a building

permit. Pursuant to Section 24.8 of the Ordinance, variances shall lapse one year from the date of the grant of the variance by the Board of Appeals unless a zoning or building permit is in effect. This regulation applies as well to Administrative variances.

2. The subject property (the "Property"), is a grandfathered lot located on Cat Creek in Mechanicsville, Maryland. The Property is exceptionally long and narrow and is entirely constrained by the Critical Area Buffer (Buffer), which has been expanded for steep slopes and highly erodible soils. The Property is also completely forested. The Applicant is proposing to construct a single-family dwelling including appurtenances and a septic system for a total of 3,630 square feet of new impervious surface. This represents 4.3 percent of the total acreage, which is well under the allowable 15 percent on a grandfathered lot of this size.
3. The Applicant proposes to clear 9,000 square feet or 10.6 percent of the existing woodland in order to construct the single-family dwelling and appurtenances. The Applicant also proposes the use of two drywells to direct storm water runoff from the dwelling.
4. The proposed site plan for the development has been reviewed and approved by the Health Department and the Soil Conservation District, who has also approved a standard erosion and sediment control plan.
5. The Maryland Critical Area Commission does not oppose this variance request because the Property is entirely constrained by the expanded Buffer. The dwelling and septic system have been located as far as possible from Cat Creek in order to minimize impacts to the expanded Buffer. There are no alternative locations for the development outside the expanded 100-foot Buffer.

The Commission recommends moving the house closer to Cat Creek Road because the Commission contends that the well is directly on the 25-foot slope setback and that the limits of disturbance intrude into the slope setback. Staff disagrees with the Commission's findings. We believe the well is just outside the setback and that the limits of disturbance do not intrude into the setback. We also disagree with the contention that the house can be moved closer to the road. The approved septic reserve area is located here and this appears to be the best location. In addition, the Applicant is proposing a turn-around area at the end of the driveway, which is necessary to provide safe egress from the Property given the location of slopes on both sides of the proposed driveway.

6. Attachment #1 is the Applicant's letter addressing the standards for variance in the Critical Area. Staff's analysis of the Applicant's compliance with the standards is provided below:
 - a. *That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.*

Staff Analysis: The Property is a grandfathered lot that is entirely constrained by the expansion of the Critical Area Buffer for steep slopes and highly erodible soils. New development activities are prohibited in the Buffer without a variance. In addition, the Property is long and narrow, leaving little room to accommodate the proposed dwelling and septic system. A strict enforcement of the Critical Area provisions of the Ordinance would result in unwarranted hardship by depriving the Applicant of the ability to develop their Property by constructing a single-family dwelling and septic system.

- b. *That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.*

Staff analysis: Lot 33 was recorded in 1952 as part of Block 3 of the Riverwood Farms Subdivision, prior to the 1985 adoption of the Maryland Critical Area regulations. Lot 33 is grandfathered under the Critical Area regulations for the right to develop provided that all zoning regulations are met. The strict interpretation of the Ordinance would prohibit development in the Buffer, which would eliminate all area for construction on the Property, thus, depriving the landowners of rights commonly enjoyed by other property owners in the LDA.

- c. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County.*

Staff analysis: Staff finds that the granting of this variance will not confer any special privileges upon the Applicant. Any property owner with a legally recorded grandfathered lot that is constrained by topographical conditions and which does not meet current environmental regulations and the Critical Area provisions of the Ordinance has the opportunity to file for a variance and seek relief from the regulations.

- d. *The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.*

Staff analysis: Staff finds that the variance request is not based on circumstances which are the result of actions by the landowner or his agent. The adoption of the Critical Area program after recordation of the lot created the need for a variance. Staff finds that it is not a result of actions by the Applicant.

- e. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.*

Staff analysis: The Applicant must provide mitigation for new impervious surface in the Buffer. A Critical Area Planting Agreement and Planting Plan are necessary to mitigate any impacts to water quality due to the increase in impervious surface in the Buffer. Staff believes that the required plantings will improve and maintain the functions of the Buffer. The Planting Agreement requires mitigation in the Buffer at a ratio of three to one (3:1) per square feet of the variance granted for impervious surface in the Buffer in accordance with Section 24.4.2.b of the Ordinance. The plantings required for Buffer mitigation will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which should contribute to improved infiltration and reduction of non-point source pollution leaving the site.

In addition, the Applicant proposes to direct storm water from the dwelling to two drywells located on the north side of the dwelling. The drywells will treat and control storm water on the Property thus protecting erodible soils on the slopes from impacts created by uncontrolled run-off.

Based on the anticipated improvements resulting from the required plantings and drywells, staff finds that the granting of a variance to increase the impervious surface within the Buffer will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the

Critical Area Buffer, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

f. The variance is the minimum necessary to achieve a reasonable use of the land or structures.

Staff analysis: Staff finds that the variance will enable the Applicant to achieve a reasonable use of the land by permitting the construction of the proposed single-family dwelling and appurtenances. The house and the septic system have been located as far as possible from Cat Creek in order to minimize the impacts to the expanded Buffer. There are no alternatives to the proposed location. The variance is the minimum necessary to achieve a reasonable use of the land.

- V. STAFF RECOMMENDATION:** Having found that the standards for granting a variance in the Critical Area have been met, and that the Maryland Critical Area Commission does not oppose this variance, staff recommends approval of this request to construct a single-family dwelling and appurtenances in the expanded Critical Area Buffer, subject to the Applicant complying with the Critical Area Planting Agreement.
- VI. CONCLUSION:** The public hearing was held as advertised on June 28, 2007. William Higgs, surveyor with LSR, Inc. presented the variance request on behalf of Mr. Konecny. Paul Clark, an adjoining property owner, expressed his concerns over the construction of a house next door to him. He wanted to know how close the house would be to his property line, the name of the builder, and whether or not construction would continue into the late hours of 9:00 or 10:00 p.m. Staff responded to his questions and Mr. Higgs explained the site plan and the fact that the house had to be located outside the steep slopes. No other comments were received.

Approval
Decision

July 12, 2007
Date

Denis Canavan
Denis Canavan, Director

VII. ATTACHMENTS:

- Attachment #1- Letter of Intent
- Attachment #2- Critical Area Comments
- Attachment #3- Critical Area Planting Agreement
- Attachment #4- Location Map
- Attachment #5- Site Plan

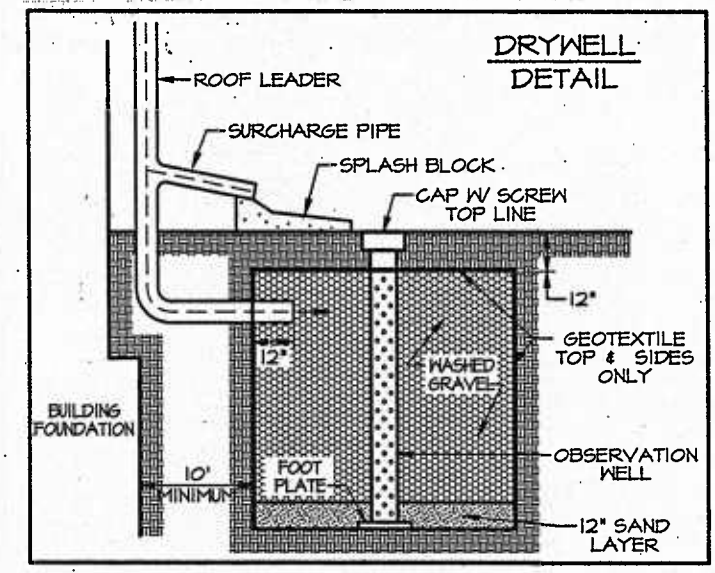
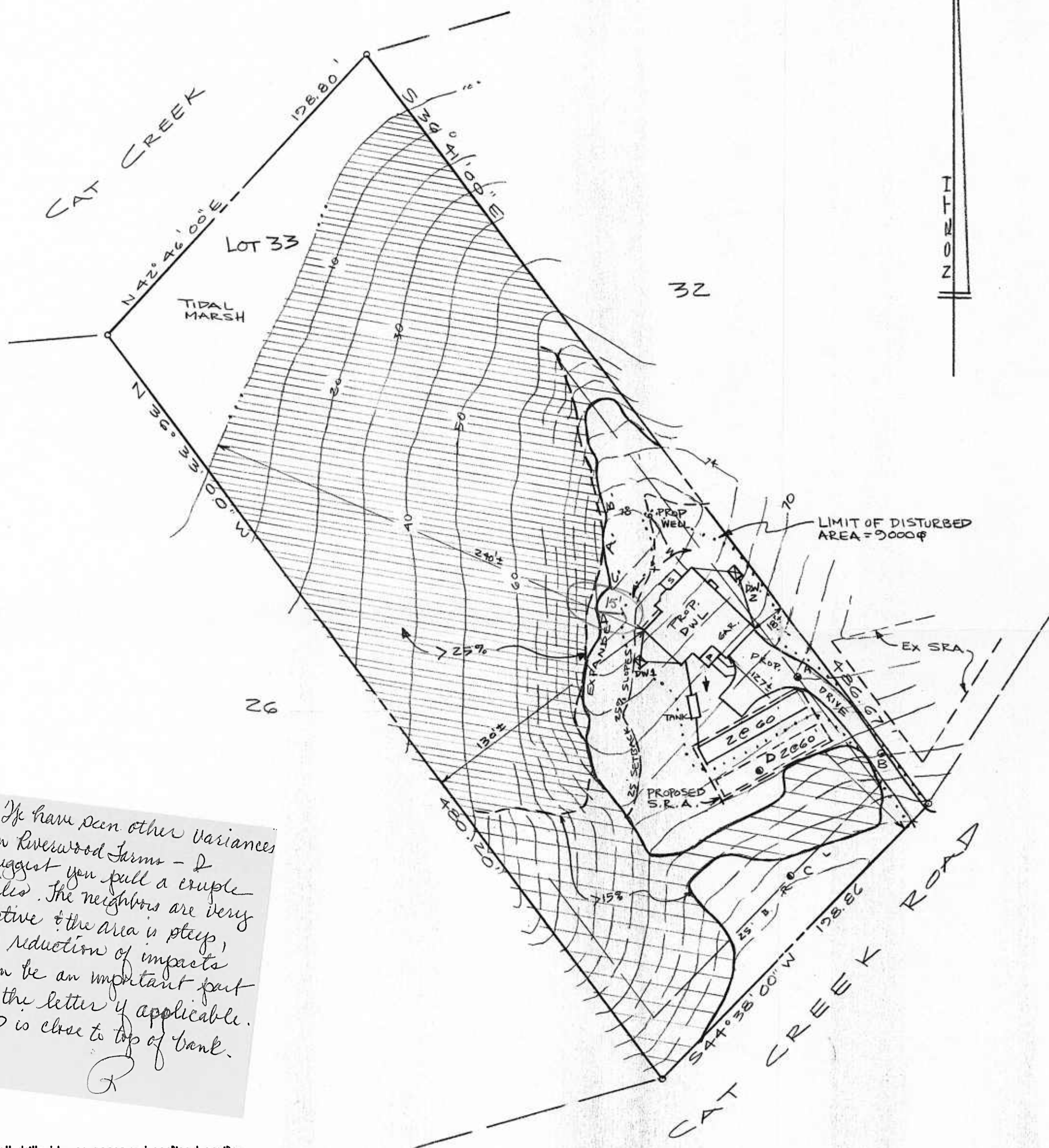
Variance Application Date: May 7, 2007

If have seen other variances in Riverwood Farms - I suggest you pull a couple files. The neighbors are very active & the area is steep, so reduction of impacts can be an important part of the letter if applicable. LOD is close to top of bank.

GENERAL NOTES

1. Subject lot is to be served by an individual deep well drilled to an approved confined aquifer and an individual septic system for sewage disposal.
2. Unless otherwise shown hereon, there are no proposed or existing wells or sewerage systems within 100' of the proposed wells and sewerage systems.
3. This lot is in compliance with the St. Mary's County Comprehensive Water and Sewerage Plan.
4. This Health Department approval certifies that the above lot is in conformance with pertinent Health Department laws and regulations as of the approval date. However, this approval is subject to changes in such law and regulations. Changes in topography or site designations may void this approval. This Designated per area is the only per area approved by the St. Mary's County Health Department for sewage disposal purposes. The approved Lot includes an approved area of 2,050 square feet for sewage disposal purposes as required by current Maryland State Health Department Law. Improvements of any nature including, but not limited to, the installation of other utility lines in the area may render the lot undevelopable. To determine the exact area of the lot approved for such purposes, you should contact The St. Mary's County Health Department, Office of Environmental Health. Septic system design based upon a 3 bedroom proposed house. (P) indicates perc test.
5. This lot contains an area of at least 20,000 square feet, not including Rights-of-Way (existing or proposed) 50 year flood plains, and grades of 25% or greater.
6. This plat was prepared without the benefit of a Title Report which may show additional conveyances, easements, covenants, rights-of-way or building restriction lines not shown hereon.
7. Unless otherwise shown, proper lines, topography and perc tests were taken from deeds and plats of record and do not represent a survey by this firm.
8. Subject property will be graded so as to drain surface water away from foundation walls. The grade away from foundation walls will fall a minimum of six inches (6") within the first ten feet (10').
9. Contours and spot shots shown hereon are referenced to an assumed datum/MSVD24/NAVD88.

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- DRYWELL DESIGN:
- MAXIMUM OF 1000 sq. ft. ROOFTOP AREA TO EACH DEVICE.
 - IF USED, LEADERS ROUTED SEPARATELY FROM EACH DOWNSPOUT TO EACH DEVICE.
 - NEED FILTERING DEVICE WITH UNDER-DRAIN (NOT DRYWELL) IF SITE IS IN "D" SOIL OR HIGH GROUND WATER TABLE PER PERC TEST.
 - LOCATED AT LEAST 10' AWAY FROM FOUNDATION WALL AND 25' FROM SEPTIC EASEMENT.
 - DISCHARGE PIPE AT DRYWELL SHOULD NOT BE MORE THAN 4' BELOW THE DOWNSPOUT TO AVOID PIPE BLOWOUT.
 - EACH DOWNSPOUT MAY DRAIN NO MORE THAN 500 sq. ft. OF ROOFTOP AREA.
 - DRYWELLS FOR EACH HOUSE SHALL BE IN ACCORDANCE WITH THE FOLLOWING TABLE:

WELL #	DA #	ROOFTOP AREA	WATER VOL. @ 0.074/US.F.	REQ'D VOL. @ 40% VOID	MINIMUM DRYWELL SIZE
1	1	800	63.2	88.5	3.5'x5'x5'
2	2	800	63.2	88.5	3.5'x5'x5'

CRITICAL AREA CALCULATIONS

- LOT AREA (FASTLAND) 1.94 AC = 84,643 sf
- IMPERVIOUS SURFACE ALLOWED @ 15% = 12,696 sf
- PROPOSED IMPERVIOUS =
 - HOUSE 1115 sf
 - GARAGE 415 sf
 - PORCH 60
 - PATIO 80
 - WALKS 60
 - DRIVE 1200
- TOTAL 3630 sf = 4.3%
- TOTAL WOODS = 84,643 sf
- PROPOSED CLEARING = 9000 sf = 10.7%

RECEIVED
SEP 07 2005
CRITICAL AREA COMMISSION



WPH
6-21-05

ST. MARY'S COUNTY
HEALTH DEPARTMENT
APPROVAL

SANITARIAN _____ DATE _____

ENV. HEALTH DIRECTOR _____ DATE _____

LSR
LITTLE SILENCES REST, INC.

41650 COURT HOUSE DRIVE - SUITE 101 - P.O. BOX 2340
LEONARDTOWN, MD 20650
PHONE: (301) 475-2236 - FAX: (301) 475-3720

DATE 6-21-05
JOB# 0142-04
FOLDER M15B
SCALE 1"=50'
DRAWN W.P. HIGGS
CHECKED
REVISIONS

BUILDING PERMIT PLAT LOT 33
RIVERWOOD FARMS SUBD.
6TH ELECTION DISTRICT
ST. MARY'S COUNTY, MARYLAND
FOR: KAREL KONECNY

ZP # 04-0878